

香港特別行政區政府
政務司司長辦公室轄下行政署



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25 March 2024

The Hon Starry LEE Wai-king, GBS, JP
Chairman of the House Committee
Legislative Council
Room 602, Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Chairman,

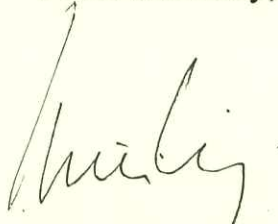
Senior Judicial Appointment

I write to inform you that the Chief Executive has accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the appointment of the Honourable James Leslie Bain ALLSOP, AC as a non-permanent judge from another common law jurisdiction (CLNPJ) of the Court of Final Appeal. Subject to the endorsement of the Legislative Council (LegCo), the Chief Executive will make the appointment under Article 88 of the Basic Law.

The Chief Executive will announce his acceptance of the JORC's recommendation today. An advance copy of the press statement on the above appointment is at **Enclosure A** for Members' reference. I should be grateful if Members could observe the confidentiality of the issue, pending the Chief Executive's public announcement.

Pursuant to Article 90 of the Basic Law, the Chief Executive shall obtain the endorsement of LegCo of the appointment. Following the procedures for endorsement of appointment of judges agreed by the House Committee, a paper on the appointment of the CLNPJ is at **Enclosure B** for Members' reference. Subject to the deliberation of the House Committee, the Government will move a motion to seek LegCo's endorsement of the appointment at the earliest opportunity.

Yours sincerely,



(Mrs Millie NG)
Director of Administration

Encl.

c.c. All LegCo Members
Clerk to the House Committee

Press Statement

Senior judicial appointment: non-permanent judge from another common law jurisdiction of the Court of Final Appeal

The Chief Executive, Mr John Lee, has accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the appointment of the Honourable James Leslie Bain Allsop as a non-permanent judge from another common law jurisdiction of the Court of Final Appeal. Subject to the endorsement of the Legislative Council, the Chief Executive will make the appointment under Article 88 of the Basic Law.

Mr Lee said, “I am pleased to accept the JORC’s recommendation on the appointment of Mr Allsop as a non-permanent judge from another common law jurisdiction of the Court of Final Appeal. Mr Allsop retired from the judicial office of Chief Justice of the Federal Court of Australia in April 2023. He is a judge of eminent standing and reputation. I am confident that he will greatly contribute to the Court of Final Appeal.

“With the appointment of Mr Allsop, the panel of non-permanent judges from other common law jurisdictions will consist of 10 eminent judges from the United Kingdom, Australia and Canada. The presence of these esteemed jurists from overseas as non-permanent judges of the Court of Final Appeal manifests the exercise of judicial power independently by the Judiciary in the Hong Kong Special Administrative Region (HKSAR) as protected by the Basic Law. It also helps maintain a high degree of confidence in the HKSAR’s judicial system, and enables Hong Kong to maintain strong links with other common law jurisdictions. I have every confidence that these distinguished jurists from overseas with profound judicial experience will continue to be a unique strength of the HKSAR’s judicial system.”

Article 90 of the Basic Law provides that the Chief Executive shall obtain the endorsement of the Legislative Council on the appointment of judges of the Court of Final Appeal. The Government will seek the endorsement of the Legislative Council of the recommended appointment in due course.

The curriculum vitae of Mr Allsop is at Annex.

**Curriculum Vitae of
The Honourable James Leslie Bain ALLSOP, AC**

1. Personal Background

Mr Allsop is a citizen of Australia. He was born in Sydney, Australia on 7 April 1953.

2. Education

Mr Allsop was educated at the University of Sydney where he obtained a Bachelor of Arts in 1974 and a Bachelor of Laws with first class honours and the University medal in 1980.

3. Legal Experience

Mr Allsop was called to the Bar of New South Wales in 1981 and Western Australia in 1983, after working in 1980 and 1981 as an article clerk in a commercial law firm and as the associate to the first Chief Justice of the Federal Court of Australia, Sir Nigel Bowen. He was appointed Senior Counsel in New South Wales (the equivalent of Queen's Counsel) in 1994 and Queen's Counsel in Western Australia in 1998. Mr Allsop practiced at the Bar until 2001, when he was appointed a Judge of the Federal Court of Australia. At the Bar he practiced in all areas of commercial law (especially Admiralty and maritime law, insurance, banking and finance, insolvency, taxation, trade practices (anti-trust), intellectual property, and construction and technology); and public law – administrative law and constitutional law.

Mr Allsop taught part time for much of the period from 1980 to 2005 in real property and equity, bankruptcy and insolvency and public company finance at the University of Sydney; and from 2005 to 2015 he taught part time in Admiralty, maritime and shipping law at the University of Sydney and from 2015 to 2018 at the University of Queensland.

4. Judicial Experience

Mr Allsop was appointed a Judge of the Federal Court of Australia on 7 May 2001 and served until 1 June 2008 when he resigned to take up the position of President of the New South Wales Court of Appeal on 2 June 2008. As President of the Court of Appeal, he sat not only in the Court of Appeal but also regularly presiding in the Court of Criminal Appeal. Mr Allsop resigned as President of the Court of Appeal on 28 February 2013 to take up the appointment of Chief Justice of the Federal Court of Australia on 1 March 2013. He was the fourth Chief Justice of that Court. He ceased to occupy that position on 6 April 2023 on reaching the mandatory retirement age.

As a Federal Court Judge in 2007 and 2008, Mr Allsop was the convenor of the national Admiralty and maritime panel of Judges of the Court and the NSW District Registry Admiralty Judge. In this period, he was also responsible for managing the Federal Court of Australia's relationship with the Supreme People's Court of China on maritime and shipping affairs.

As a Judge and as Chief Justice of the Federal Court of Australia, Mr Allsop sat at first instance and on appeal on a full range of the Court's jurisdiction including intellectual property, banking finance and insurance, company law, bankruptcy and insolvency, labour law, commercial arbitration, taxation, public law and constitutional law, and native title.

As President of the Court of Appeal of New South Wales and also presiding in the Court of Criminal Appeal, he heard appeals in the full range of commercial law, common law, equity, public law, constitutional law and criminal law.

On 8 January 2024, Mr Allsop was appointed an International Judge of the Singapore International Commercial Court.

5. Services and Activities Related to Law

In addition to teaching at the University of Sydney and the University of Queensland, Mr Allsop has delivered and given numerous lectures and papers on legal topics. He was a Member of the Board of Governors of the World Maritime University in Malmo in Sweden and a Member of the Board of the Australian Maritime College as part of the University of Tasmania from 2008 to 2011. Mr Allsop is a Titulary Member of the Comité Maritime International; a Fellow of the Australian Academy of Law; a Member of the American Law Institute; an Honorary Bencher of the Middle Temple; and Patron of the Australian Insurance Law Association.

6. Activities Outside the Legal Field

Mr Allsop enjoys relaxing by reading, listening to music, exercising and travelling and spending time with his family. He reads and speaks French (to moderate intermediate proficiency) as well as being a native English speaker.

**APPOINTMENT OF NON-PERMANENT JUDGE
OF THE COURT OF FINAL APPEAL –**

JUDGE FROM ANOTHER COMMON LAW JURISDICTION

INTRODUCTION

Pursuant to Article 90 of the Basic Law of the Hong Kong Special Administrative Region (“HKSAR”) and section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (“the Ordinance”), the Government intends to give notice in due course to move a motion to obtain the endorsement of the Legislative Council (“LegCo”) for the appointment of The Honourable James Leslie Bain ALLSOP, AC (“Mr Allsop”) to the Court of Final Appeal (“CFA”) as a non-permanent judge from another common law jurisdiction (“CLNPJ”). The curriculum vitae of Mr Allsop is at *Appendix 1*.

Appendix 1

BACKGROUND

The Court of Final Appeal

2. The CFA is the final appellate court in Hong Kong. The CFA hears appeals in civil and criminal matters and may confirm, reverse or vary decisions of the lower courts.

3. The CFA consists of the Chief Justice and the permanent judges (“PJs”). Non-permanent judges may be invited to sit. There are two lists of non-permanent judges –

- (a) the list of non-permanent Hong Kong judges (“HKNPJs”); and
- (b) the list of CLNPJs.

Section 10 of the Ordinance sets a ceiling of 30 on the total number of persons holding office as non-permanent judges at any one time.

4. In accordance with section 16 of the Ordinance, the CFA is constituted by five judges when hearing and determining appeals, as follows –

- (a) the Chief Justice or a PJ designated to sit in his place under subsection (2);
- (b) three PJs nominated by the Chief Justice; and
- (c) one HKNPJ or one CLNPJ (selected by the Chief Justice and invited by the CFA).

Where the Chief Justice is not available to hear an appeal, he should designate a PJ to preside at the appeal in his place. Where a sufficient number of PJs are not available to hear an appeal, the Chief Justice should nominate a HKNPJ to sit in place of a PJ.

Duties, Requirements and Qualifications for CLNPJs

Duties

5. The duty of a non-permanent judge is to hear civil and criminal appeals in the CFA. The CFA deals with appeals in –

- (a) any civil cause or matter that falls under the civil jurisdiction of the CFA under Part II of the Ordinance and any other law, as provided for in section 21 of the Ordinance; and
- (b) any criminal cause or matter that falls under the criminal jurisdiction of the CFA under Part III of the Ordinance, as provided for in section 30 of the Ordinance.

Basic Law Requirements

6. Article 92 of the Basic Law stipulates that judges of the HKSAR shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions.

Statutory Qualifications

7. Section 12(4) of the Ordinance provides that a person shall be eligible to be appointed as a CLNPJ if he is –

- (a) a judge or retired judge of a court of unlimited jurisdiction in either civil or criminal matters in another common law jurisdiction;
- (b) a person who is ordinarily resident outside Hong Kong; and
- (c) a person who has never been a judge of the High Court, a District Judge or a permanent magistrate, in Hong Kong.

Tenure of Office of Non-Permanent Judges

8. Under section 14(4) of the Ordinance, a non-permanent judge shall hold office for a term of three years, but that term may be extended for one or more periods of three years by the Chief Executive acting in accordance with the recommendation of the Chief Justice. Under section 14(3) of the Ordinance, there is no retiring age for a non-permanent judge.

Constitutional and Legal Framework for the Appointment

Chief Executive

9. Article 48(6) of the Basic Law confers on the Chief Executive the power and function to appoint judges of the courts at all levels in accordance with legal procedures.

10. Article 88 of the Basic Law provides that judges of the courts of the HKSAR shall be appointed by the Chief Executive on the recommendation of an independent commission. The Judicial Officers Recommendation Commission (“JORC”) is the statutory body constituted by the Judicial Officers Recommendation Commission Ordinance (Cap. 92) (“JORC Ordinance”) to perform the functions of the independent commission referred to in Article 88 of the Basic Law.

11. In the case of the appointment of CFA judges, Article 90 of the Basic Law provides that the Chief Executive shall, in addition to following the procedures prescribed in Article 88 of the Basic Law, obtain the endorsement of the LegCo and report such appointment to the Standing Committee of the National People’s Congress for the record. These requirements in relation to CFA judges are also stipulated in section 7A of the Ordinance.

JORC

12. Pursuant to Article 88 of the Basic Law and the JORC Ordinance, the JORC is entrusted with the function of making recommendations to the Chief Executive regarding the appointment of judges. The JORC consists of the Chief Justice as the Chairman, the Secretary for Justice and seven other members appointed by the Chief Executive (two judges, one barrister appointed after consultation with the Bar Council of the Hong Kong Bar Association, one solicitor appointed after consultation with the Council of the Law Society of Hong Kong and three persons not connected with the practice of law). Under section 3(3A) of the JORC Ordinance, a resolution at a meeting of the JORC is not effective if there are more than two votes which are not in favour. The recommendation of the JORC is then communicated to the Chief Executive.

LegCo

13. Article 73(7) of the Basic Law confers on the LegCo the power and function to endorse the appointment of CFA judges. Article 90 of the Basic Law provides that the Chief Executive shall obtain the endorsement of the LegCo for the appointment of CFA judges.

14. The system of judicial appointment for CFA judges thus provides for the Chief Executive to make an appointment on the recommendation of an independent commission, viz. the JORC, as laid down in Article 88 of the Basic Law, and to obtain the endorsement of the LegCo for the appointment under Article 90 of the Basic Law.

CURRENT APPOINTMENT EXERCISE

JORC's Recommendation

15. Pursuant to Article 88 of the Basic Law and section 6(a) of the JORC Ordinance, the JORC has recommended the appointment of Mr Allsop as a CLNPJ of the CFA for a term of three years. The recommendation has been communicated to the Chief Executive.

The Chief Executive's Acceptance of the JORC's Recommendation

16. In accordance with Article 88 of the Basic Law and section 9(2) of the Ordinance, the Chief Executive has accepted the recommendation of the JORC on the appointment of Mr Allsop as a CLNPJ of the CFA. Subject

to the endorsement of the LegCo pursuant to Article 90 of the Basic Law and section 7A of the Ordinance, the Chief Executive will make the recommended appointment.

The JORC Process

The JORC Meeting

17. The JORC held a meeting in the first quarter of 2024 to consider the recommendation of the person to be appointed as a CLNPJ.

Quorum

18. A quorum as required by section 3(3) of the JORC Ordinance was present at the JORC meeting at which the recommended appointment was considered.

Statutory Disclosure

19. In view of the qualifications required of CLNPJs under section 12(4) of the Ordinance (as detailed in paragraph 7 above), none of the members of the JORC could reasonably be regarded as a candidate for the CLNPJ position and they had not been invited, under section 3(5B) of the JORC Ordinance, to declare their interest in filling such position.

JORC's Deliberations

The Non-Permanent Judges

20. The JORC noted that, as at the date of the meeting, there were 14 non-permanent judges comprising four HKNPJs and 10 CLNPJs and that one CLNPJ (who was 85) had indicated that given his age, he would not wish to have his term of office extended for another three years upon its expiry by the end of February 2024¹. A list of the 14 non-permanent judges then is at **Appendix 2**.

Appendix 2

¹ Consequently, there are 13 non-permanent judges comprising four HKNPJs and nine CLNPJs as from 1 March 2024.

21. The list of 10 CLNPs comprises retired judges from the United Kingdom, Australia and Canada. A CLNP is normally required to come to Hong Kong for a period of four weeks at a time. In the past three years or so (January 2021 to January 2024), all the 10 CLNPs were selected to sit on the CFA.

Caseload of the CFA

Appendix 3

22. The JORC noted the statistics on applications for leave to appeal and substantive appeals in the past four years from 2020 to 2023 as set out in *Appendix 3*. Applications for leave to appeal are dealt with by the Appeal Committee². The volume of applications for leave to appeal is an indicator of the likely caseload of substantive appeals which will come before the CFA. While the number of substantive appeals remains steady each year, the JORC noted that the CFA has to cope with a generally heavy caseload bearing in mind the relatively small number of PJs³.

Judicial Manpower Position

23. The JORC noted that the CFA has been functioning satisfactorily. It has been the CFA's established practice since 1 July 1997 that, the "5th judge" (please refer to paragraph 4(c) above) is drawn from the list of CLNPs to hear substantive appeals.

24. There are practical constraints on arrangements for the 10 CLNPs (reduced to nine by the end of February 2024) to come to Hong Kong for four weeks to sit on the CFA each year. All of the CLNPs have extensive professional commitments including arbitration, mediation and/or lecturing work for which they are in huge demand. Owing to their various commitments, quite a number of them may not manage a four-week period once a year. There are also other logistical considerations in inviting CLNPs to sit on the CFA. For instance, the relevant judge may simply be unavailable to sit on the CFA during the timeslot in which he is asked to sit. In addition, since most of the judges have expertise in different areas of law,

² Section 18 of the Ordinance stipulates that the power of the CFA to hear and determine any application for leave to appeal shall be exercised by the Appeal Committee, consisting of the Chief Justice and two PJs nominated by the Chief Justice or three PJs nominated by the Chief Justice. Where a sufficient number of PJ is not available to hear and determine an application, the Chief Justice nominates a HKNPJ to sit in place of a PJ.

³ There are currently three PJs of the CFA.

it is desirable to appoint more CLNPJs with expertise in different areas of law to better cover the range of cases that may come before the Court.

25. The JORC noted that it is important that substantive appeals are heard within a reasonable time. Bearing in mind that the Chief Justice intends to continue to invite a CLNPJ as the “5th judge” for hearing appeals (please refer to paragraph 4(c) above), it would assist the listing of cases considerably if the pool is enlarged. The JORC agreed that the number of CLNPJs should be increased to provide greater flexibility in handling the caseload and ensure the effective operation of the CFA.

Proposed Appointment

26. The JORC considered the proposed appointment of Mr Allsop as CLNPJ of the CFA appropriate, having regard to his curriculum vitae. Specifically, Mr Allsop retired from the judicial office of Chief Justice of the Federal Court of Australia in April 2023. He is a judge of eminent standing and reputation and his appointment will be a great asset to the CFA.

JORC’s Resolution

27. The JORC resolved to recommend to the Chief Executive the appointment of Mr Allsop as a CLNPJ for a term of three years. There are nine CLNPJs as from 1 March 2024. If Mr Allsop is appointed, the total number of CLNPJs will be increased to 10.

The Chief Executive’s Acceptance of the Recommendation

28. The Chief Executive has accepted the recommendation of the JORC.

ENDORSEMENT OF THE LEGISLATIVE COUNCIL

29. Subject to the endorsement of the LegCo, the Chief Executive will make the recommended appointment and will report the appointment to the Standing Committee of the National People’s Congress for the record.

Administration Wing
Chief Secretary for Administration’s Office
March 2024

The Honourable James Leslie Bain ALLSOP, AC

1. Personal background

Mr Allsop is a citizen of Australia. He was born in Sydney, Australia on 7 April 1953.

2. Education

Mr Allsop was educated at the University of Sydney where he obtained a Bachelor of Arts in 1974 and a Bachelor of Laws with first class honours and the University medal in 1980.

3. Legal experience

Mr Allsop was called to the Bar of New South Wales in 1981 and Western Australia in 1983, after working in 1980 and 1981 as an article clerk in a commercial law firm and as the associate to the first Chief Justice of the Federal Court of Australia, Sir Nigel Bowen. He was appointed Senior Counsel in New South Wales (the equivalent of Queen's Counsel) in 1994 and Queen's Counsel in Western Australia in 1998. Mr Allsop practiced at the Bar until 2001, when he was appointed a Judge of the Federal Court of Australia. At the Bar he practiced in all areas of commercial law (especially Admiralty and maritime law, insurance, banking and finance, insolvency, taxation, trade practices (anti-trust), intellectual property, and construction and technology); and public law – administrative law and constitutional law.

Mr Allsop taught part time for much of the period from 1980 to 2005 in real property and equity, bankruptcy and insolvency and public company finance at the University of Sydney; and from 2005 to 2015 he taught part time in Admiralty, maritime and shipping law at the University of Sydney and from 2015 to 2018 at the University of Queensland.

4. **Judicial experience**

Mr Allsop was appointed a Judge of the Federal Court of Australia on 7 May 2001 and served until 1 June 2008 when he resigned to take up the position of President of the New South Wales Court of Appeal on 2 June 2008. As President of the Court of Appeal, he sat not only in the Court of Appeal but also regularly presiding in the Court of Criminal Appeal. Mr Allsop resigned as President of the Court of Appeal on 28 February 2013 to take up the appointment of Chief Justice of the Federal Court of Australia on 1 March 2013. He was the fourth Chief Justice of that Court. He ceased to occupy that position on 6 April 2023 on reaching the mandatory retirement age.

As a Federal Court Judge in 2007 and 2008, Mr Allsop was the convenor of the national Admiralty and maritime panel of Judges of the Court and the NSW District Registry Admiralty Judge. In this period, he was also responsible for managing the Federal Court of Australia's relationship with the Supreme People's Court of China on maritime and shipping affairs.

As a Judge and as Chief Justice of the Federal Court of Australia, Mr Allsop sat at first instance and on appeal on a full range of the Court's jurisdiction including intellectual property, banking finance and insurance, company law, bankruptcy and insolvency, labour law, commercial arbitration, taxation, public law and constitutional law, and native title.

As President of the Court of Appeal of New South Wales and also presiding in the Court of Criminal Appeal, he heard appeals in the full range of commercial law, common law, equity, public law, constitutional law and criminal law.

On 8 January 2024, Mr Allsop was appointed an International Judge of the Singapore International Commercial Court.

5. Services and activities related to law

In addition to teaching at the University of Sydney and the University of Queensland, Mr Allsop has delivered and given numerous lectures and papers on legal topics. He was a Member of the Board of Governors of the World Maritime University in Malmo in Sweden and a Member of the Board of the Australian Maritime College as part of the University of Tasmania from 2008 to 2011. Mr Allsop is a Titulary Member of the Comite Maritime International; a Fellow of the Australian Academy of Law; a Member of the American Law Institute; an Honorary Bencher of the Middle Temple; and Patron of the Australian Insurance Law Association.

6. Activities outside the legal field

Mr Allsop enjoys relaxing by reading, listening to music, exercising and travelling and spending time with his family. He reads and speaks French (to moderate intermediate proficiency) as well as being a native English speaker.

List of Non-Permanent Judges of the Court of Final Appeal
(As at 1.1.2024)

A. Non-Permanent Hong Kong Judges

	Date of First Appointment	Expiry Date of Present Appointment
1. The Honourable Mr Justice Syed Kemal Shah BOKHARY	25.10.2012	24.10.2024
2. The Honourable Mr Justice Patrick CHAN Siu-oi	21.10.2013	20.10.2025
3. The Honourable Mr Justice Robert TANG Ching	25.10.2018	24.10.2024
4. The Honourable Mr Justice Frank STOCK	1.9.2010	31.8.2025

B. Non-permanent Judges from Other Common Law Jurisdictions (CLNPJs)

	Date of First Appointment	Expiry Date of Present Appointment
1. The Right Honourable The Lord HOFFMANN	12.1.1998	11.1.2025
2. The Honourable Mr Justice Murray GLEESON	1.3.2009	29.2.2024 ¹
3. The Right Honourable The Lord NEUBERGER of Abbotsbury	1.3.2009	29.2.2024 ²
4. The Right Honourable The Lord COLLINS of Mapesbury	30.6.2011	29.6.2026
5. The Right Honourable The Lord PHILLIPS of Worth Matravers	1.10.2012	30.9.2024
6. The Honourable Mr Justice William GUMMOW	29.7.2013	28.7.2025
7. The Honourable Mr Justice Robert FRENCH	31.5.2017	30.5.2026
8. The Right Honourable Madam Justice Beverley McLACHLIN	30.7.2018	29.7.2024
9. The Right Honourable Lord SUMPTION	18.12.2019	17.12.2025
10. The Honourable Mr Justice Patrick KEANE	6.4.2023	5.4.2026

¹ Mr Justice Gleeson has indicated that given his age (he is 85 now), he would not wish to have his appointment as CLNPJ extended for another three years upon the expiry of his term on 29 February 2024. Accordingly, he has ceased to be a CLNPJ as from 1 March 2024.

² On the recommendation of the Chief Justice, approval has been given by the Chief Executive for extension of term of office of Lord Neuberger for another three years from 1 March 2024 to 28 February 2027.

**Caseload Statistics on the Court of Final Appeal
from 2020 to 2023**

	No. of cases											
	1.1.2020 to 31.12.2020			1.1.2021 to 31.12.2021			1.1.2022 to 31.12.2022			1.1.2023 to 31.12.2023		
	Filed	Disposed	Withdrawn	Filed	Disposed	Withdrawn	Filed	Disposed	Withdrawn	Filed	Disposed	Withdrawn
Application for leave to appeal												
- Civil	289	314	28	564	539	27	670	574	17	352*	326	62
- Criminal	53	60	3	35	69	4	58	29	2	43	46	2
(Total)	(342)	(374)	(31)	(599)	(608)	(31)	(728)	(603)	(19)	(395)	(372)	(64)
Substantive appeal												
- Civil	11	15	1	6	6	1	14	7	0	10	11	0
- Criminal	2	6	0	10	10	0	4	4	0	13	11	0
(Total)	(13)	(21)	(1)	(16)	(16)	(1)	(18)	(11)	(0)	(23)	(22)	(0)

* The decrease in number of applications for leave to civil appeal in 2023 is mainly due to decrease in non-refoulement claim cases.